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7 COSMO LOPEZ,  
8 Plaintiff,  
9 v.  
10 SYSCO CORPORATION, et al.,  
11 Defendants.

Case No. [15-cv-04420-JSW](#)

**ORDER CONTINUING HEARING,  
REQUIRING SUPPLEMENTAL  
BRIEFING, AND VACATING CASE  
MANAGEMENT CONFERENCE**

Re: Docket Nos. 7, 17

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13 Now before the Court for consideration are: (1) the motion to remand, filed by Plaintiff  
14 Cosmo Lopez; and (2) the motion to dismiss filed by Defendant Sysco Corporation. The Court  
15 has considered the parties' papers, relevant legal authority, and the record in this case, and it finds  
16 that supplemental briefing is warranted.

17 Accordingly, the Court CONTINUES the hearing scheduled for December 11, 2015 to  
18 February 5, 2016 at 9:00 a.m. The Court VACATES the case management conference scheduled  
19 for January 8, 2016, and it shall reset the conference, if necessary, once it has resolved the pending  
20 motions.

21 Sysco argues that the Court has jurisdiction, because Lopez' claims that Sysco violated  
22 California Labor Code provisions regarding meal and rest periods are completely preempted under  
23 Section 301 of the Labor Management Relations Act ("Section 301").

24 The Ninth Circuit has established a two part test to determine if claims are preempted  
25 under Section 301. *See Burnside v. Kiewit Pacific Corp.*, 491 F.3d 1053 (9th Cir. 2007). First, the  
26 court inquires "whether the asserted cause of action involves a right conferred upon an employee  
27 by virtue of state law [and] not by a CBA." 491 F.3d at 1059. If not, Section 301 preemption  
28 applies, and the Court's inquiry is at an end.

1        If however, the answer to the question is yes, the Court must consider whether the claim  
 2 substantially depends on an analysis of a collective bargaining agreement. If the claim does not  
 3 depend on such an analysis, the claim is not preempted and the plaintiff may proceed under state  
 4 law. If, however, the Court answers yes, the claim is preempted. *Id.* at 1059-1060.

5        Lopez has argued that his rest and meal period claims are not preempted, because they  
 6 involve non-negotiable statutory rights. In support of this argument, Lopez relies on *Valles v. Ivy*  
 7 *Hill Corp.*, 410 F.3d 1071 (9th Cir. 2005). Sysco has not addressed this argument directly in any  
 8 of its briefs.

9        Accordingly, the Court requests supplemental briefing from the parties on the following  
 10 question:

11        Even if the Court were to find that there might be a dispute over the meaning of a provision in the CBA relating to the rest or meal period claims, what is Sysco's best argument that, in light of *Valles*, the Court could consider that dispute? *See, e.g., Rodriguez v. Pacific Steel Casting Co.*, No. 12-cv-00353-NC, 2012 WL 2000793, at \*5 (N.D. Cal. June 1, 2012) ("The Ninth Circuit has held that a court may not consider a collective bargaining agreement 'purporting to waive the right to meal periods' under California law, because such agreement would be unenforceable.").

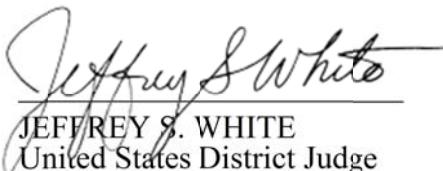
16        In their responses, the parties shall assume, for the sake of argument, that the Court: (1) is satisfied that Lopez would be covered by the CBA; and (2) rejects Sysco's argument that the meal period claim would satisfy the first prong of the *Burnside* test.

19        Because Sysco bears the burden of demonstrating that the Court has jurisdiction, it shall file the opening brief on this point, which shall be due by December 18, 2015. Lopez' response shall be due by January 8, 2016. Sysco may file a reply by no later than January 15, 2016. The parties' supplemental briefs shall not exceed seven pages.

23        **IT IS SO ORDERED.**

24        Dated: November 7, 2015

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 JEFFREY S. WHITE  
 United States District Judge